

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0720

Use Tax

For Calendar Years 1994, 1995, and 1996

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ISSUE(S)

I. Use Tax – Imposition

Authority: 45 IAC 2.2-3-4; 45 IAC 2.2-3-8(a); 45 IAC 2.2-3-12; 45 IAC 2.2-3-19; 45 IAC 2.2-3-25

Taxpayer protests the imposition of use tax.

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1994, 1995, and 1996. Upon audit it was discovered that the taxpayer failed to remit use tax on clearly taxable items. Taxpayer also purchased a radio station. The previous owner had rented software to run the radio station. When the taxpayer purchased the radio station, they did not want the software and agreed to a buyout of the previous owner's software agreement. Communications with the lessor of the software, found the taxpayer agreed to the buyout amount of the software lease upon purchase of the radio station.

Taxpayer presented a letter from the lessor stating it received payments from the taxpayer totaling \$11,100 as a negotiated settlement, to release taxpayer from any liability or responsibility for any and all terms or claims to an agreement signed by the original lessor and seller of the radio station. The letter further states that the taxpayer did not receive services or merchandise from the lessor regarding these payments and these payments did not involve the exercising of any option in the lease agreement between the original lessee and lessor. It further states that no agreement existed between lessor and the taxpayer. It was simply a settlement. There was no lease agreement between taxpayer and the original lessor.

I. Use Tax - Imposition

DISCUSSION

Taxpayer protests the assessment of use tax on a software lease used by the previous owners to run the radio station. Taxpayer agreed to a buyout of the software agreement and had no use for the software.

No lease agreement existed between taxpayer and lessor (collectively “the parties”); the transaction between the parties resulted from taxpayer’s bulk purchase of the radio station. Further, the payments to the seller of the station were the result of a settlement agreement wherein the taxpayer would not be held liable or responsible for any and all terms or claims of an agreement between the lessor and the seller, i.e., the previous owner of the radio station. Taxpayer did not receive any taxable service or merchandise from this transaction. Taxpayer did not exercise any option in the lease agreement, as taxpayer had no privity with the original lease agreement.

The department finds no taxable transaction exists because the taxpayer was not a party to the lease. This payment may be taxable to the original owner, but not to this taxpayer.

FINDING

Taxpayer’s protest is sustained.

ISSUE

II. Tax Administration – Penalty

DISCUSSION

Taxpayer requests all penalties be abated because it has always made every attempt to properly report and pay all taxes due and has implemented new procedures to report and pay

tax on all taxable purchases in a timely manner.

Taxpayer's audit indicates it made a minimal amount of use tax payments in 1994 and none in 1995 and 1996. The Indiana Code and Regulations are clear regarding the self-assessment of tax where no tax is charged.

Taxpayer has not provided reasonable cause to allow the department to waive the penalty. Taxpayer should have had use tax procedures in effect to assure tax is paid.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained for Issue I and denied for Issue II.